

## Fair Workweek FAQ

This document contains answers to frequently asked questions for the Philadelphia Code, Chapter 4600, the Fair Workweek Ordinance. If you have a question that is not addressed by this FAQ, you can contact the Office of Worker Protections (email: [Fairworkweek@phila.gov](mailto:Fairworkweek@phila.gov); phone: 215-686-0802). Language assistance is available. You do not need identification or a social security number to file a complaint.

### **Overview**

This Ordinance provides protections for Employees working for or at certain Retail, Hospitality, and Food-Service Establishments, that employ 250 or more employees and have 30 or more locations worldwide.

Employees must be working within the geographic boundaries of Philadelphia, regardless of their immigration status. Employees can be full-time, part-time, temporary, or seasonal.

The main components of the Fair Workweek Ordinance are:

- 1) Advance Notice of Work Schedules (§ 9-4602)
- 2) Compensation for Changed Work Schedules (§ 9-4603)
- 3) the Right to Rest Between Work Shifts (§ 9-4604)
- 4) the Offer of Work to Existing Employees (§ 9-4605)
- 5) Retaliation Prohibited (§9-4606)
- 6) Notice to employees (§ 9-4608)
- 7) Employer Records (§ 9-4609)
- 8) Enforcement and Penalties (§ 9-4611)

The Office of Worker Protections is the Agency designated by the Philadelphia Department of Labor to enforce this Ordinance.

## Fair Workweek FAQ

### **General:**

**1. Q: When is the Fair Workweek Ordinance in effect?**

A: April 1, 2020. However, employers have until July 1, 2020 to provide Good Faith Estimates to existing employees.

**2. Q: Where can you read the Fair Workweek Ordinance?**

A: The Fair Workweek Ordinance and accompanying regulations are on the Mayor's Office of Labor website, under "Resources".

**3. Q: What employers are covered by the Fair Workweek Ordinance?**

A: The Ordinance applies to retail, food, or hospitality establishments, with 250 or more employees worldwide and 30 or more locations worldwide. This includes chain establishments and franchises. Such employers are referred to as Covered Employers. (See § 9-4601 of the Ordinance and Fair Workweek Regulations.)

**4. Q: If an employer owns more than one business in one building, does each business count as one location?**

A: Yes. Each business is one location.

**5. Q: What employees are counted towards the 250 or more employees count?**

A: All employees performing work for compensation on a full-time, part-time or temporary basis, shall be counted. When the number of employees fluctuates, the number of employees for the current calendar year will be based on the average number of employees during the preceding calendar year. (See § 9-4601 (4) of the Ordinance.)

**6. Q: What employees are covered by this Ordinance?**

A: All employees performing work at or for a Covered Employer (see above for definition) for compensation on a full-time, part-time or temporary basis, including but not limited to: floor managers who directly oversee services, delivery drivers, maintenance, front desk or front-of-house employees, non-exempt pharmacy staff, tipped employees, and security staff, but

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excluding administrative and professional hourly employees such as those in human resources, payroll, and receptionist positions, and the trades.

**7. Q: Are delivery drivers covered?**

A: Yes. Covered Employers must provide Fair Workweek provisions to delivery drivers who work for employer locations within the city.

**8. Q: Are security and maintenance workers covered?**

A: Yes. Security and maintenance workers are covered when their work involves at least occasional responses to customer requests. *For example, overnight security and maintenance hired to work back of the house are not covered if they will never interact with customers.*

**9. Q: Are floor managers covered?**

A: Yes. Floor managers who are eligible for overtime are covered.

**10. Q: Does the Ordinance apply to temporary or seasonal employees?**

A: Yes.

**11. Q: Does the Ordinance apply to Temporary Staffing Agencies?**

A: Yes, temporary staffing agencies are required to comply with the Ordinance where the length of time a temporary employee works at or for a Covered Employer at least 16 hours over a two-week period. **Temporary staff who meet this requirement should receive a written Good Faith Estimate, Advance Notice of Posted Work Schedule and Predictability Pay as defined by the Ordinance.**

**12. Q: Does the Ordinance apply to Pool Pharmacists?**

A: Yes. Pool Pharmacists are covered by the Fair Workweek Ordinance and must be included on the posted work schedule. However, there may be an exception for health and safety requirements by law. Contact the Office of Worker Protections for more information by emailing [Fairworkweek@phila.gov](mailto:Fairworkweek@phila.gov).

**13. Q: Are Co-Employers liable for provisions under the Ordinance?**

A: Yes. Co-Employers are responsible, both individually and jointly, for compliance with all of the provisions of the ordinance.

**14. Q: Are Co-Employers responsible for fines and damages?**

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A: Yes, Covered Employers and Co-Employers are subject to Joint and Several Liability.

**15. Q: Does immigration status affect employees' rights under the Ordinance?**

A: No, the Ordinance and Regulations apply to employees regardless of their immigration status. The Agency does not collect any information regarding immigration status or citizenship.

### **Employers:**

**1. Q: What support does the City offer for Covered Employers to be in compliance with the Ordinance?**

A: The City of Philadelphia offers training to employers upon request for aid in labor law compliance. Employers may request such training via email ([fairworkweek@phila.gov](mailto:fairworkweek@phila.gov)) or via phone (215-686-0802). We also offer advising on how to bring employer policies into compliance.

**2. Q: What materials does the City of Philadelphia provide?**

A: The City of Philadelphia offers posters that are in compliance with the requirement of Notice to employees of their rights under this Ordinance in various languages; translation into other languages are available upon request. We also offer templates for Good Faith Estimates and Written Mass Communications.

**3. Q: How will the City inform employers of the yearly changes to the predictability pay calculation for Tipped employees paid less than \$7.25 / hour by the employer?**

A: The Agency will post the rate updates on the Mayor's Office of Labor website, under the "Resources" tab.

**4. Q: Must covered employers inform employees about the Fair Workweek Ordinance?**

A: Yes. Employers must post a Notice of employees' rights under this Ordinance in an accessible, conspicuous location on-site in English and the primary spoken language of at least 5% of their employees. The Notice must inform employees that retaliation is prohibited. Our Office provides a compliant Notice poster in the most commonly spoken languages in Philadelphia for download on the Mayor's Office of Labor website, under the "Resources" tab.

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In addition, employers are required to inform employees about other City Ordinances such as wage theft and paid sick leave.

**5. Q: What must employers provide new employees before or upon hiring?**

A: A Good Faith Estimate, Notice of employee's rights under this Ordinance, Advance Notice of any Work Schedules that fall within the Advance Notice requirement, and the employer's policy for making Offers of Work to Existing Employees.

**6. Q: How can employers protect themselves from employees abusing the system?**

A: Employers are encouraged to retain adequate documentation to demonstrate their compliance with the Ordinance.

### **Employees:**

**1. Q: What is a violation of this Ordinance?**

A: Violations of this ordinance include:

- Failure to provide Good Faith Estimates
- Failure to post work schedule 10 days in advance
- Failure to pay Predictability Pay
- Failure to offer new work hours to existing employees before hiring new employees or provide a policy on offering and distributing new work hours.
- Failure to obtain written consent for adding additional hours to the posted work schedule. (*this means employees may decline by not giving written consent.*)
- Failure to allow 9 hours of rest between certain shifts or to obtain consent and pay employee \$40
- Failure to keep records of compliance for 2 years
- Failure to post notice in an accessible location
- Retaliation for exercising rights

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- Failure to follow other provisions in this Ordinance

**2. Q: What can an employee do if they believe their rights under this Ordinance have been violated?**

A: An employee or other person can file a complaint to the Office of Wage and Benefits Compliance. They can also file a lawsuit in court.

*Employees who believe their rights are violated are encouraged to first approach a supervisor about the violation.*

**3. Q: Who can file a complaint with the Agency?**

A: An affected employee who believes their rights under this Ordinance have been violated, or any other person aware of a violation. You do not need identification or a social security number in order to file a complaint.

**4. Q: How does someone file a complaint with the Office of Worker Protections?**

A: An employee, other person or group of which an employee is a member of, can file a complaint by filling out the complaint form available on the [Philadelphia Department of Labor Home Page](#) under “Resources” and emailing it to [Fairworkweek@phila.gov](mailto:Fairworkweek@phila.gov). Complainants can also call the Office at 215-686-0802 for assistance.

**5. Q: How much time do affected employees or other persons have to file a complaint for a suspected violation of the Ordinance?**

A: Within two years of the date the person knew or should have known of the alleged violation.

**6. Q: Are complainants kept confidential?**

A: The Agency shall maintain confidential the identity of any complainant unless disclosure of such complainant’s identity is necessary for resolution of any investigation by the Agency, or otherwise required by Ordinance. The Agency shall, to the extent practicable, notify such complainant that the Agency will be disclosing their identity prior to such disclosure.

**7. Q: What happens after an employee files a complaint?**

A: The Agency will contact the complainant and the employer, explain the process and ask for supporting documentation. The complainant will be walked through the process and can withdraw their complaint at any time.

*Employers are encouraged to designate a point of contact for the Agency.*

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**8. Q: Can individuals bring a private action in court against an employer?**

A: Yes.

**9. Q: Can an individual file a complaint with the Office and bring a civil action at the same time?**

A: If a complainant decides to bring a civil suit or add their class action their complaint will be withdrawn from the Agency with regard to those specific facts.

**10. Q: Can an individual file a grievance with the Union when they experience a violation of the Ordinance?**

A: Yes.

**11. Q: Can an individual file a complaint with the Office and file a grievance with the Union at the same time?**

A: Yes. The Agency may still investigate the employer, however there may be a stay of the investigation until the grievance process is complete.

### **Advance Notice:**

Employers shall provide employees with a written, Good Faith Estimate of the employee's Work Schedule and revise this Good Faith Estimate whenever a Significant Change occurs 6 weeks out of a 12 week period. Employers must provide Posted Work Schedules at least ten (10) days in advance from April 1, 2020 to December 31, 2020, and fourteen (14) days in advance from January 1, 2021 onwards. Employees may decline to work any hours or additional shifts not included in the Posted Work Schedule, though they may voluntarily consent by Written Communication.

**1. Q: What is a Good Faith Estimate?**

A: A Good Faith Estimate is a written average of work hours or shifts an employee can expect to be scheduled to work each week. "Good faith" means a sincere intention to deal fairly with others. The Good Faith Estimate is a reasonable, fact based prediction; employers may base it on forecasts, prior hours worked by a similarly situated employee, or other information. Employers are encouraged to interact with employees when generating Good Faith Estimates. The employer

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is encouraged to engage in an interactive process to discuss employee requests but may grant or deny the request for any reason that is not unlawful. § 9-4602 (1).

### **2. Q: What must be included in the Good Faith Estimate?**

A: The Good Faith Estimate must include:

- the average number of hours the employee can expect to work over a typical 90-day period *(does not include unpaid meal or rest breaks)*
- what days of the week they can expect to work or not work, what shift times they can expect to work or not work and at least one day a week where an employee can expect to not be scheduled to work. *(does include unpaid meal or rest breaks)*
- whether or not they can expect to be on-call.

*(See the regulations on the [Fair Workweek resource page](#) for requirements and examples)*

### **3. Q: What happens if an employer attempts to change the Good Faith Estimate to reflect constant changes initiated by the employee, and the employee does not agree?**

A: The definition of what qualifies as a Significant Change in the regulations outlines that divergence from the GFE “due to documented employee-initiated changes” does not count as a significant change.

### **4. Q: Are there any exemptions to the GFE requirements?**

A: Yes. There are two exceptions to the GFE requirements. Temporary staffing agencies whose temporary employees work at or for a Covered Employer less than 16 hours over a two-week period. Good Faith Estimates must be provided to new employees beginning April 1, 2020 and must be provided to existing employees by July 1, 2020. New Locations are also exempt from providing Good Faith Estimates for 30 days.

### **5. Q: Can an employer provide more than one Good Faith Estimate at the same time to an individual employee?**

A: Yes. For employees whose average work hours are at least 32 hours per week, employers may provide an alternating weekly Good Faith Estimate, for a maximum of two weeks, so long as both average numbers of hours for each week are at least 32 hours. Each week may provide for



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different days/shifts the employee can expect to work or not work. The posted work schedule must indicate which estimate the employee is scheduled for.

**6. Q: Can an employer frequently issue Good Faith Estimates to employees?**

A: The Good Faith Estimate must be made in “good faith” and made to reflect a typical 90 day work period. The Agency may investigate Good Faith Estimates issued more frequently than every 90 days.

**7. Q: Can the Good Faith Estimate include a range of average number of work hours?**

A: No, the average number of work hours must not be a range of hours.

**8. Q: Do employee initiated changes to the work schedule made by written requests qualify as a significant change?**

A: No. Changes to an employee’s schedule which are due to a documented voluntary change (see § 6.0(b)) do not qualify as a Significant Change from the Good Faith Estimate (Regs 3.3 c (a)).

**9. Q: How much Advance Notice must employers provide for Posted Work Schedules?**

A: Between April 1, 2020 and December 31, 2020, employers must provide employees with at least ten days Advance Notice for Posted Work Schedules. From January 1, 2021 onwards, employers must provide employees with at least fourteen days Advance Notice for Posted Work Schedules.

**10. Q: Can an employer provide more advance notice that is outlined in the Ordinance?**

A: Yes. Employers can provide more notice than the advance notice requirements and would have until the 24 hours after the 10 day notice requirement (9 days before the workweek) to make changes.

**11. Q: Is the advanced notice requirement for posted work schedules 14 days from each work day?**

A: No. The work schedule must be posted no later than 14 days before the first day of any new Work Week. A Work Week is a period of 7 consecutive days beginning on any designated days.

*For example, if an employer’s Work Week is designated to begin on Thursday, April 16th, 2020. The schedule for the Work Week that begins April 16th, 2020 needs to be posted no later than Thursday, April 2nd, 2020. The employer would have 24 hours, April 3, 2020, to make employer initiated changes without paying Predictability Pay. (See exception to Predictability Pay for other exceptions § 9-4603(2))*

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### **12. Q: What information must employers provide on Posted Work Schedules?**

A: Employers shall provide at least each employee's first initial and full last name, whether or not they are scheduled to work during that Posted Work Schedule. Employers can exclude survivors of domestic abuse, sexual assault, or stalking, if the employee initiates such a request, provided the employee makes that request in writing and the employer retains those records in compliance with the Ordinance.

### **13. Q: Can an employee request changes to the schedule or provide availability?**

A: Yes. Employers can make changes to the Posted Work Schedule due to an employee-initiated written request with no Predictability Pay needed at any time.

### **14. Q: Does a required training or mandatory meeting have to be included in the 14 day advance notice of posted work schedule?**

A: Yes. The 14 day advance notice of posted work schedule must include all times the employee is scheduled to work in a given workweek and therefore is subject to predictability pay.

### **15. Q: Does the Good Faith Estimate requirement apply to New Locations?**

A: No. New Locations are establishments that have been operated by the employer less than 30 days and had not previously been operated by such employer for at least 180 days prior to opening and are exempt from providing good faith estimates.

## **Predictability Pay:**

### **1. Q: What is Predictability Pay?**

A: A payment employers must pay to employees for employer-initiated changes to their Posted Work Schedule. *You can learn more about Predictability Pay [by reading this blog](#).*

### **2. Q: Under what circumstances must an employer pay its employees Predictability Pay?**

A: When there is an employer-initiated change in the Posted Work Schedule that does not fall into the exemptions delineated in the Ordinance. (See § 9-4603 of the Ordinance.)

### **3. Q: What are the exemptions to Predictability Pay?**

A: Below are all the exemptions delineated in the Ordinance:

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- Employee requests a Shift change by Written Communication
- Employees mutually agree to a Shift trade, subject to an employer policy about exchanging Shifts
- Employer's operations cannot begin or continue due to threats to the employees or the Employer's property; failure of a public utility or the shutdown of public transportation; a fire, flood or other natural disaster; a state of emergency declared by the President of the United States, Governor of the state of Pennsylvania, or Mayor of the city; or severe weather conditions that disrupt transportation or pose a threat to employee safety
- Employee begins or ends work no more than twenty minutes before or after the scheduled start or end time of the shift
- Employee volunteers to work additional hours in response to Mass Written Communication from employer, provided it is only used for additional hours that resulted from another employee being unable to work scheduled hours, and it makes clear accepting such hours is voluntary and employee has the right to decline such hours
- Hours are subtracted due to termination of employment
- Changes made to Posted Work Schedule within 24 hours after the Advance Notice required
- Hours subtracted for disciplinary reasons pursuant to multi-day suspension, provided employer documents in writing the incident leading to disciplinary action
- Ticketed event is cancelled, scheduled, rescheduled, postponed, delayed, increases in expected attendance by 20% or more, or increases in duration, due to circumstances that are outside the employer's control and that occur after the employer provides the Posted Work Schedule with the advance notice required by § 9-4602(4). Additional hours due to a change in a ticketed event's duration that fall within this exemption will also be fully exempt from § 9-4602(6)
- Hotel banquet event is scheduled due to circumstances outside the employer's control, after the employer provides the Posted Work Schedule with the Advance Notice required

#### **4. Q: How much is Predictability Pay?**

A: For each employer-initiated change to the Posted Work Schedule that occurs after the Advance Notice required:

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Please see chart below.

<b>Change made:</b>	<b>Predictability Pay:</b>
Employer adds time to work shift, with no loss of hours	One hour at Employee's rate of pay
Employer changes the date of a work shift	One hour at Employee's rate of pay
Employer changes the time of a work shift	One hour at Employee's rate of pay
Employer changes the location of a work shift	One hour at Employee's rate of pay
Employer subtracts hours from a regular OR On-Call Shift	No less than one-half times Employee's rate of pay per hour, for any scheduled hours the Employee does not work
Employer cancels a regular OR On-Call Shift including not calling in to work an On Call Shift.	No less than one-half times employee's rate of pay per hour, for any scheduled hours the employee does not work

**5. Q: What qualifies as consenting to work an available shift in writing?**

A: An employee *must request a shift change by Written Communication*. Written Communication means print or electronic means, including email, text messages, use of scheduling applications, or other forms of communication that can be saved in their original format

**6. Q: When a manager requests that an employee work additional hours, can an employee decline to work?**

A: Yes. An employee may decline to work any hours or additional shifts not included in the Posted Work Schedule without fear of discipline or adverse action. (See § 9-4602 (6))

**7. Q: Does an employee get predictability pay when they work later than their scheduled shift?**

A: Yes. An employee must receive predictability pay when they begin or end work more than 20 minutes before or after the scheduled start and end time of the shift. An exception is when the employee requests the shift change by Written Communication.

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**8. Q: If an employee clocks in 20 minutes early and clocks out 20 minutes late will that still qualify as an exception to Predictability Pay?**

A: Yes. The 20 minutes are allowed on both ends of the shift.

**9. Q: What is an On-Call Shift?**

A: Any time an employer requires an employee to be available to work, or to contact the employer or the employer's designee to wait to be contacted by the employer or its designee, to determine whether the employee must report to work at that time.

**10. Q: Does Predictability Pay apply to changes in On-Call Shifts?**

A: Yes. The employee is owed predictability pay when an employer changes scheduled on-call shifts such as taking the call shift off the schedule or not calling in an employee during their scheduled on-call shift.

**11. Q: Is predictability pay due for a late 14 day advance notice of posted work schedule?**

A: No, predictability pay is due for employer-initiated changes to the Posted Work Schedule that occurs after the advance notice required by Section 9-4602(3). In the case of a schedule posted late, there is no posted work schedule to change. Instead, the remedy is that the Agency may impose presumed damages of \$50 per impacted employee for each pay period in which the violation occurs or continues.

**12. Q: If an employee called out (*suddenly*), does an employer have to get written consent and pay Predictability Pay to an employee for covering that shift?**

A: Yes. If an employer asks an employee to cover a shift or stay late resulting in additional hours to their posted work schedule, the employer must receive consent and provide predictability pay. However, when an employee accepts a shift due to a Written Mass Communication, it is considered voluntary and the employer would not have to pay predictability pay.

**13. Q: Under what circumstances does an employer use a Written Mass Communication to notify employees of additional hours?**

A: The Written Mass Communication is only used for additional hours that are the result of another employee being unable to work scheduled hours. The Written Mass Communication must make clear that accepting such hours is voluntary and the employee has the right to decline such hours. An employer is not required to provide predictability pay if Mass Communication is

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used to fill the available hours. *(Please note: the Written Mass Communication is different from the posting of additional hours in § 9-4605.)*

### **14. Q: Who should receive the Written Mass Communication?**

A: All employees who are qualified to fill the shift should receive the written mass communication. *For example: If a server is unable to work scheduled hours, the mass communication should go to all employees who are qualified to serve, including a busser who sometimes works as a server.* Temporary staff or agency staff are not required to receive the written mass communication.

### **15. Q: How long must an employer wait after a Written Mass Communication goes out?**

A: The Ordinance and Regulations does not put any requirements on wait time. If an employer wants to use other measures to fill the shift rather than wait they will be required to pay Predictability Pay, unless an exception applies.

### **16. Q: Does Predictability Pay apply for schedule changes of a few minutes?**

A: No. Employers do not need to provide Predictability Pay if the employee's schedule changes by less than twenty minutes from the start and end time of their scheduled Shift.

### **17. Q: Can employees voluntarily trade Shifts between themselves?**

A: Yes. Employees may voluntary trade Shifts between themselves, provided it follows the employer's established policy for trading Shifts.

### **18. Q: Do employees voluntarily trading Shifts trigger Predictability Pay?**

A: No, as long as the employees consent to the Shift trade by Written Communication.

### **19. Q: When should I see Predictability Pay in my check?**

A: In the same pay period as the Shift change which triggered Predictability Pay.

## **Right to Rest Between Work Shifts:**

### **1. Q: When do employees receive 9 hours of rest?**

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A: Employees shall not be scheduled less than nine hours after the end of the previous day's shift, or during the nine hours following the end of a shift that spanned two days unless the employee provides consent and payment of \$40.

**2. Q: Does this mean employees can not be scheduled for long shifts or double shifts?**

A: No. This does not prohibit employees from working long shifts or double shifts.

### **Offer of Work to Existing Employees before hiring new employees:**

**1. Q: What must employers include in Offers of Work to Existing Employees?**

A: The written notice shall include a description of the position and its required qualifications, the schedule of available shifts, the length of time the employer anticipates requiring coverage of the additional hours, and the process by which employees may notify the employer of their desire to work the offered Shifts. The notice should be posted in a conspicuous location.

**2. Q: Where should the employer post the written Offer of Work to Existing Employees?**

A: The notice of work must be posted and accessible to all employees who work for the employer including at other worksites and locations. Employees must know where to find the written posting.

**3. Q: Does this written notice have to be in any languages other than English?**

A: Yes. The written notice shall be in English and in the primary languages of at least 5% of the existing employees.

**4. Q: How long do employers have to post the written Offer of Work?**

A: Employers must post the Offer of Work notice for 72 hours.

**5. Q: What are the requirements for distributing additional hours employees have expressed a desire to work?**

A: The employer shall distribute hours in accordance with the criteria set forth in the written notice of available work shifts to one or more existing employees who have accepted such shifts and who, to a reasonable employer acting in good faith, are qualified to perform the work. The employer shall not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity, disability, age, marital or familial status, nor on

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the basis of family caregiving responsibilities or status as a student, and the employer may not distribute hours in a manner intended to avoid application of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001.

**6. Q: If a qualified employee accepts a portion of the Offer of New Hours, must an employer award them that portion of the new hours?**

A: Yes. However, the employer does not have to offer a portion of an individual Shift but shall offer separate Shifts.

**7. Q: What if an employer must fill an available shift in less than 72 hours?**

A: The employer shall get written consent from an employee to work the available shift, and pay that employee Predictability Pay, provided one of the delineated exemptions to Predictability Pay do not apply.

**8. Q: When there is a need to immediately fill work shifts (before the end of 72 hour posting requirement), can an employer hire temp workers?**

A: Yes.

**9. Q: Does the requirement of Offer of Work mean I have to provide overtime work to employees?**

A: No. Nothing in the Ordinance shall be construed to mean that employers must provide overtime work to their employees.

**10. Q: Do employers have to offer hours at other locations in the city?**

A: If it is the standard practice of the employer to schedule employees across more than one location, they have to offer new work hours to employees at all such locations. If it is not the standard practice of the employer to schedule employees across more than one location, the employer is not required to offer new work hours to employees who work at other locations.

**11. Q: Do employers have to create a policy on offering and distributing the new hours?**

A: Yes. The policy should include the process by which employees may notify the employer of their desire to work available shifts and the criteria for distribution of work shifts among qualified and interested employees.

**12. Q: Do employers have to notify employees of the policy on offering and distributing new hours?**



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A: Yes. Employers must notify employees by Written Communication of the policy on offering and distributing new hours upon hire, and within 24 hours of any changes to the policy. In addition, the employer must post the policy in an accessible and conspicuous location.

### **Exercise of Rights Protected. Retaliation Prohibited:**

#### **1. Q: What is retaliation?**

A: Retaliation is any adverse action taken against an employee that penalizes such employee or is reasonably likely to interfere with or deter such employee from exercising or attempting to exercise any right protected under this Chapter.

#### **Retaliation is illegal under the Fair Workweek Ordinance.**

#### **2. Q: What does it mean for employees to “exercise their rights”?**

A: Employees must be permitted to exercise their rights. The following rights are not exhaustive.

- Refusing to work a shift that was scheduled in violation of the Ordinance
- Denying a request to work a shift not included in the Posted Work Schedule
- Requesting Predictability Pay for a Schedule change that is not exempted
- Requesting employer records of employee schedules at their workplace
- Filing a complaint of alleged violation(s) of the Ordinance with the Agency
- Communicating with another person, including coworkers, about the Fair Workweek Ordinance
- Inquiring about giving Notice of the Ordinance to employees
- Inquiring about any of rights in this Ordinance

#### **3. Q: What are some examples of retaliation?**

A: Some examples include but are not limited to: threatening, intimidating, disciplining, discharging, demoting, suspending or harassing an employee; assigning an employee to a lesser position in terms of job classification, job security, or other condition of employment; reducing the hours or pay of an employee or denying the employee additional hours; and discriminating against the employee, including actions or threats related to perceived immigration status or work authorization.

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There is a 90 day presumption of retaliation. (see § 9-4606(4).) If an employer retaliates against an employee for exercising their rights, the employer is subject to damages, fines and penalties including but not limited to reinstatement of terminated employee.

**4. Q: Does the Ordinance protect employees from retaliation if they've mistakenly, but in good faith, exercised their rights?**

A: Yes.

### **Employer Records:**

**1. Q: What records must employers retain to be in compliance?**

A: Employers must retain for a period of two year the documentation necessary to demonstrate compliance with the Ordinance. This includes, but is not limited to, Posted Work Schedules, including any modifications, with no information redacted, Good Faith Estimates, including any revised Good Faith Estimates, written consent to work additional hours, and documentation of written employee-initiated Schedule changes. *(Our office advises written and documented policies and practices related to the Fair Workweek Ordinance.)*

**2. Q: What information can employees request from employers?**

A: Employees may request work schedules for all employees at the location for any previous week for the past two years, including the originally posted and modified versions of work schedules. Employees must put information requests in writing. The employer may not redact any information in these records before providing the records to the employee.

**3. Q: Do employers have to allow access to their records to the Agency?**

A: Yes. Employers must provide the Agency access to records within a reasonable time and at a mutually agreeable time.

### **Enforcement and Penalties**

**1. Q: Who is the Agency authorized to enforce the Fair Workweek Ordinance?**

A: The Office of Worker Protections , a department within the Philadelphia Department of Labor.

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**2. Q: Under what circumstances will the Agency open an investigation into an employer?**

A: The Agency may open an investigation either:

- 1) due to a complaint received by the Agency; or
- 2) under the Agency's own initiative.

**3. Q: What can happen if an employer is found in violation of the Ordinance?**

A: The Agency shall have the power to impose penalties and fines for violation of this Chapter and to provide or obtain appropriate relief. Remedies may include reinstatement and full restitution to the employee for lost wages and benefits, including Predictability Pay required by this Chapter. The damages are as follows for violations of § 9-4602 and 9-4605:

- For a written estimate under § 9-4602(1) that is incomplete or lacks a good faith basis, \$200 employer's failure to provide a written Work Schedule as required by § 9-4602(3) or to post the Work Schedule as required by § 9-4602(4), \$50 per impacted employee for each pay period in which the violation occurs or continues
- For an employer's failure to promptly notify the employee of changes to the Posted Work Schedule as required by § 9-4602(5), \$45 per impacted employee for each pay period in which the violation occurs or continues
- For an employer's failure to obtain written consent for added work hours as required by § 9-4602(6), \$100 per impacted employee for each pay period in which the violation occurs or continues
- For an employer's failure to provide written notice of available work hours as required by § 9-4605(2), \$50 per impacted employee for each pay period in which the violation occurs or continues
- For an employer's failure to provide written notice of its policy for distributing work hours as required by § 9-4605(6), \$50 per impacted employee for each pay period in which the violation occurs or continues
- For an employer's failure to award available work hours as required by § 9-4605(4), \$1,000 per impacted employee for each pay period in which the violation occurs or continues

The Agency reserves the right to impose triple damages for employers found to be repeat offenders.

## Fair Workweek FAQ

### 4. Q: What fines and penalties can be imposed on the employer?

A: It shall be a Class III (\$2,000) offense under § 1-109(3) of this Code for a Covered Employer to retaliate against an employee for any activity protected under this Chapter. All other violations of this Chapter shall be Class II (\$1,200) offenses under § 1-109(2) of this Code.

The Agency will impose fines and penalties for violations of this Chapter and provide or obtain appropriate relief. Remedies may include reinstatement and full restitution to the employee for lost wages and benefits including Predictability Pay.

### 5. Q: Are damages paid to the employee?

A: Yes. Damages are awarded to the employee who experiences an employer's violation of §9-4602 and §9-4605 and are outlined in the [regulations](#). Fines and penalties are not awarded to the employee.

Presumed damages	Damage amount
Incomplete GFE	\$200 / impacted employee
Failure to provide written schedule / late schedule	\$50 / impacted employee / pay period
Failure to notify of changes	\$25 / impacted employee / pay period
Failure to obtain written consent (additional hours)	\$100 / impacted employee / pay period
Failure to provide written notice of available hours	\$50 / impacted employee / pay period
Failure to provide written notice of policy for distributing work hours	\$50 / impacted employee / pay period
Failure to award available hours to existing employees	\$1000 / impacted employee / pay period

*If you have further questions or would like to request training, please contact our office via email ([Fairworkweek@phila.gov](mailto:Fairworkweek@phila.gov)) or via phone (215-686-0802).*